

S. 1260. A bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes (Rept. No. 105-182).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRASSLEY:

S. 2029. A bill to reduce temporarily the duty on sodium bentazon; to the Committee on Finance.

By Mr. BUMPERS:

S. 2030. A bill to amend the Federal Rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. TORRICELLI (for himself and Mr. COVERDELL):

S. Con. Res. 93. A concurrent resolution expressing the sense of the Congress with respect to documentation requirements for physicians who submit claims to Medicare for office visits and for other evaluation and management services; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS:

S. 2030. A bill to amend the Federal rules of Civil Procedure, relating to counsel for witnesses in grand jury proceedings, and for other purposes; to the Committee on the Judiciary.

THE GRAND JURY DUE PROCESS ACT

Mr. BUMPERS. Madam President, I am today introducing legislation which will remedy a longstanding injustice in our criminal justice system by granting to grand jury witnesses the right to the presence of counsel when testifying before the grand jury.

In our legal system, the right to counsel is fundamental. Every person, no matter how guilty or innocent, deserves to have an advocate. So fundamental is this right to counsel that it was recognized by the founders and enshrined in the sixth amendment to the Constitution. Along with the right to an impartial jury, public trial, and the right to confront witnesses, it is a universal element of fundamental fairness recognized by every civilized system of justice. Lawyers may never be popular, said William Shakespeare in *Henry VI, Act III Scene II*: "The first we do, let's kill all the lawyers."

But lawyers are a necessity. No one in his right mind wants to confront the judicial system without the benefit of a lawyer.

The Anglo-American criminal justice system has given us more freedom and

better justice than any country in the history of civilization. The rights of American citizens evolved over centuries of English and American history and are now enshrined in the Bill of Rights and are the standards of freedom and liberty all over the world. We must not allow those rights to be eroded. No American would claim that our system is perfect, nor do I so claim. I am convinced beyond a doubt that our system has serious flaws, one of which most people are probably not even aware and many might find hard to believe in this day and age. A witness summoned before a grand jury has no right to the presence of his lawyer in the grand jury room. Depriving anybody of the right to counsel is fundamentally wrong. No person should be required to face any part of the criminal justice system without the presence of his or her lawyer if he or she chooses.

Think of it this way. Police have absolutely no right to question an arrestee without his lawyer in the room unless the individual waives that right. The police even have a constitutional duty under the *Miranda* decision to advise people of their rights to a lawyer, even though anybody who has watched television in the last 35 years ought to know that they are entitled to a lawyer. If the police fail to observe this constitutional requirement, the statement by the accused is inadmissible in court.

But when an ordinary citizen is called before a grand jury, no lawyer—no lawyers are allowed to be present. The prosecutor and the grand jury have the unlimited ability to question the witness, who is not even under arrest, without an attorney present. This gross inconsistency can only be described as Byzantine, an anachronism.

I have never been one to say that criminal defendants have too many rights. They have no more than the Constitution entitles them. In this instance, however, a criminal defendant has more rights than the average ordinary citizen called before a grand jury. A criminal defendant cannot be questioned without a lawyer present, and he or she may invoke his or her right not to testify under the fifth amendment privilege against self-incrimination.

But a witness, a witness in the grand jury room who may later become a target under criminal investigation, has no such rights. He or she must testify fully and truthfully, no matter how burdensome or embarrassing or impertinent or irrelevant the questions may be, and without the assistance of counsel. The rules of evidence which normally require that questions be relevant and material do not apply in the grand jury room. On the contrary, so-called "fishing expeditions" have become commonplace. No matter how irrelevant or outrageous the questions, the witness must answer.

Madam President, I ask you or any American to consider whether, if you or your son or daughter were served a

subpoena to testify before the grand jury on a criminal case, even though the grand jury is supposedly investigating somebody else, would you want the right to have your own lawyer in the room? Would you feel the process was a fair one if you were told that you were not legally entitled to have a lawyer present? What if you or your loved one were called before the grand jury for a second, third, or fourth time? Would you begin to feel that you might be under suspicion for something? And would you feel comfortable answering endless questions without your lawyer present?

The grand jury is the only circumstance I can imagine in life where a free person does not have a complete legal right to hire a lawyer and have that lawyer accompany him in any kind of proceeding. No matter how serious the matter under consideration, no matter what the question—from the most complex matter of tax accounting to the most personal, intimate family concerns—no matter how hazy your recollection might be, you have no right to a lawyer before the grand jury. The grand jury room is the one and only room in the courthouse, the very temple of justice, where the proceeding is entirely one-sided.

Under existing law, there could be a sign on the grand jury room saying, "No lawyers allowed." The Government has as many lawyers as the Treasury can pay. The witness has zero. Notwithstanding that he or she may be there against his or her will, notwithstanding the power of the grand jury and the prosecutor to indict, a witness before a grand jury is defenseless. He or she has no friend in the room. Surely, nobody feels so alone as a grand jury witness, knowing that the weight of the Federal criminal justice system rests on his or her every word. Give the wrong answer, you can be accused of perjury, obstruction of justice, or any other of a number of crimes. If you refuse to answer, you can go directly to jail without benefit of a trial, being held in contempt.

Madam President, I ask you to consider, What kind of atmosphere is created in this one-sided proceeding? Is it one of fairness or is it one of intimidation? Bear in mind that there is no limit on the number of times a person may be called to testify before the same grand jury. In recent news reports—we have all read them—some people have been called to testify for the fifth or sixth time—no lawyer allowed—before the same grand jury. If you were in this position, or a member of your family were, how would you feel about being called for the sixth time to testify without your lawyer present? Would you feel threatened or intimidated? And this kind of proceeding not only does not provide justice and fairness, it doesn't even provide the appearance of justice and fairness, which is essential if citizens are to have confidence in our criminal justice system.